

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

APRIL TERM, 1902.

No. 1188.

147

JAMES BARRETT, APPELLANT,

vs.

THE COLUMBIA RAILWAY COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MARCH 4, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

JAMES BARRETT, Appellant,
vs.
THE COLUMBIA RAILWAY Co. } No. 1188.

a Supreme Court of the District of Columbia.

JAMES BARRETT, Plaintiff,
vs.
THE COLUMBIA RAILWAY COMPANY, Defendant. } No. 44427. At Law.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 Declaration, &c.

Filed January 10, 1901.

In the Supreme Court of the District of Columbia.

JAMES BARRETT, Plaintiff,
vs.
THE COLUMBIA RAILWAY COMPANY, Defendant. } At Law. No. 44427.

The plaintiff, a resident of the District of Columbia, sues the defendant, The Columbia Railway Company, a corporation, for that heretofore, to wit, on the 9th day of July, A. D. 1900, the said defendant was operating a street railroad, commonly known as the Columbia street railroad, within and doing business in the District of Columbia, and was operating and running a system of street cars over said railroad and for the transportation of passengers within the said District, to wit, on H street northeast, in the city of Washington, District of Columbia; that the plaintiff, while riding a bicycle in a reasonably safe and prudent manner, and while attempting to cross the tracks of the said railroad company at or near 15th and H street-northeast, in the said city of Washington, close behind a west-bound car running on the tracks of said defendant, and without any fault or neglect on the part of the plaintiff, and while plaintiff was in the exercise of due and reasonable care for his

personal safety, by reason of the carelessness and negligence of the defendant and its servants in operating its cars at the place and at the time mentioned, to wit, at or about 7 o'clock p. m., July 9, 1900, at or near 15th and H streets northeast, in the city of Washington,

2 was struck by an east-bound car running on the tracks of said defendant parallel to and immediately adjoining the tracks on which the aforesaid west-bound car was running, and of the approach of which said east-bound car plaintiff had no notice or warning and could not by the exercise of due and reasonable care on his, the plaintiff's, part have had notice or warning, and was knocked off his bicycle by a blow from the aforesaid east-bound car, or some of the appliances attached to said car, and precipitated violently to the ground, his head in falling coming into sudden and severe contact with the running-board of the aforesaid east-bound car, and his right knee likewise being sharply and severely hit by violent contact with the aforesaid car or with the ground, whereby and by reason whereof plaintiff suffered a severe sprain and permanent injury to his knee, and plaintiff's head and body *was* sorely bruised and hurt, and the plaintiff was greatly wounded and permanently injured, insomuch that the plaintiff then and there became and was sick, sore, lame, and disordered and totally disabled from the performance of his duties for a long space of time, to wit, from thence hitherto, during which time the plaintiff suffered and underwent great pain and was hindered and prevented from carrying on, transacting, and proceeding in his lawful and necessary affairs and business by him during that time to be performed and transacted, and thereby lost and was deprived of great gains and profits which had been accustomed to arise and accrue and which otherwise would have continued to arise and accrue to the said plaintiff from the transacting and carrying on of the same, and also by reason of the premises aforesaid the plaintiff was forced and obliged to and did then and there pay, lay out, expend, and

3 incur liability for divers large sums of money, amounting in the whole to the sum of \$350.00, in and about his necessary support and maintenance, to wit, at the city of Washington, in the District of Columbia, aforesaid.

Wherefore said plaintiff saith he is injured and hath sustained damage to the amount of \$5,000.00, and therefore he brings this suit.

WM. E. AMBROSE,
JAS. B. ARCHER, JR.,
CHAS. H. MERILLAT,
Attorneys for Plaintiff.

NOTE.—The defendant is to plead hereto on or before the 20th day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

WM. E. AMBROSE,
JAS. B. ARCHER, JR.,
CHAS. H. MERILLAT,
Attorneys for Plaintiff.

4

Plea.

Filed February 12, 1901.

In the Supreme Court of the District of Columbia.

JAMES BARRETT	}	At Law. No. 44427.
vs.		
THE COLUMBIA RAILWAY COMPANY.		

The defendant, The Columbia Railway Company, for plea to the declaration filed in the above-entitled cause, says that it is not guilty as alleged.

J. J. DARLINGTON,
Attorney for Defendant.

Joinder of Issue.

Filed February 14, 1901.

In the Supreme Court of the District of Columbia.

JAMES BARRETT	}	At Law. No. 44427.
vs.		
THE COLUMBIA RAILWAY COMPANY.		

The plaintiff joins issue on the defendant's plea to the declaration herein.

AMBROSE & ARCHER,
CHAS. H. MERILLAT,
Attorneys for Plaintiff.

5

Memorandum.

December 11, 1901.—Verdict for defendant.

Memoranda.

December 14, 1901.—Motion for new trial filed.

" 24, " " " " continued until Jan'y 3,
1902.

January 3, 1902.—Term prolonged and time extended for hearing motion for new trial to January 10, 1902.

January 6, 1902.—October term, 1901, prolonged thirty-eight days to settle bill of exceptions.

Supreme Court of the District of Columbia.

FRIDAY, *January* 10, 1902.

Session resumed pursuant to adjournment, Hon. H. M. Clabaugh, justice, presiding.

* * * * *

JAMES BARRETT, Plaintiff,

vs.

THE COLUMBIA RAILWAY Co., Defendant.

No. 44427. At Law.

6 The motion for a new trial herein, argued and submitted to the court on the 6th instant, is upon consideration thereof, this day ordered overruled, and judgment on verdict ordered. Therefore it is considered that the plaintiff take nothing by this suit, and that the defendant go thereof without day and recover against the plaintiff its costs of defense, to be taxed by the clerk, and have execution thereof.

From the foregoing judgment the plaintiff in open court, by his attorney, notes an appeal to the Court of Appeals of the District of Columbia and prays that a bond for costs be fixed. Thereupon it is ordered that the plaintiff be required to file a bond for costs herein on said appeal in the sum of one hundred (\$100.00) dollars, or in lieu thereof deposit fifty dollars (\$50.00) in the registry of this court.

Memorandum.

January 24, 1902.—Appeal bond filed.

7 Supreme Court of the District of Columbia.

WEDNESDAY, *February* 5, 1902.

Session resumed pursuant to adjournment, Hon. H. M. Clabaugh, justice, presiding.

* * * * *

JAMES BARRETT, Plaintiff,

vs.

COLUMBIA RAILWAY COMPANY, Defendant.

No. 44427. At Law.

Now again comes here the plaintiff, by his attorney, and tenders to the court his bill of exceptions taken during the trial of this cause, and prays that it may be duly signed, sealed, and made part of the record, now for then, which is done accordingly.

Bill of Exceptions.

Filed February 5, 1902.

In the Supreme Court of the District of Columbia.

JAMES BARRETT
vs.
COLUMBIA RAILWAY COMPANY. } At Law. No. 44427.

Be it remembered that the above-entitled cause came on for trial on the 10th day of December, A. D. 1901, before Mr. Justice Clabaugh and a jury, Messrs. James B. Archer, Jr., and Charles H. 8 Merillat appearing on behalf of the plaintiff, and Messrs. Charles C. Cole and Rudolph B. Behrend appearing on behalf of the defendant.

And thereupon the plaintiff, to maintain the issues upon his part joined, gave evidence by the following witnesses tending to prove as follows:

* JAMES BARRETT, plaintiff, about 48 years old, testified that he was an engineer, and that on July 9th, 1900, between 6 and 7 o'clock p. m., he was riding home on his bicycle, which he had ridden for about two years. He was coming down Bladensburg road at a moderate speed. Just before reaching the corner of Bladensburg road and H street he noticed a car to the east of him, and not quite to 15th street when he first saw it, coming along the north or west bound track of the Columbia railway. When he turned the corner he headed his wheel so as to cross over the street-car track and go out Maryland avenue home. He saw the west-bound car coming out, and slowed up to let the car go by. The car as he got close to it also slowed up but didn't stop. The conductor gave the signal and it started off. He had to go a short distance alongside of the car. By this time he was going very slow and merely balancing his wheel. He rode along west with the car a short distance, until it passed far enough for him to go behind and cross the other track. He started to cross over and go home out Maryland avenue when the east-bound car came along without any warning whatever and struck his bicycle. Asked what, if any, signals, soundings of gongs, or other warnings he received of the approach of the east-bound car prior to its striking him, he replied none. As he crossed the track the east-bound car struck him so quick—it was right on him—that he didn't have time to save himself. As the car 9 ran into his bicycle he grabbed the short chain which holds the fender to the cars. He swung on to it and it dragged him some distance. He judged about ten or fifteen feet. His knee was thrown against the running-board of the car and his hold was broken, and he fell to the ground between the two car tracks. The

car passed on and then stopped. Several persons rushed over to his assistance. He tried to get up, but couldn't. The car that struck him was ahead of him. He couldn't say how far he was behind the car, as he was in right smart pain, but perhaps eight or ten feet. The bicycle was in the fender of the car. John Tolbert helped him over to a bale of hay, and then he was taken to the hospital. The car that struck him was a long, yellow, open summer car. He was taken to the hospital, and then to his home, where he was in the house about three months. His leg was bent and he was lame from the accident. He was then asked how fast he was going as he was dragged along, and, objection being overruled, replied it was going ten miles an hour or so when it struck his wheel, he should judge—on him before he could save himself. He generally crossed the track here (indicating where Maryland avenue meets H street), but as the car was coming he crossed further up to the west. Asked as he turned from the Bladensburg road into H street towards Maryland avenue what he saw coming up H street, going east, and if there was anything there, witness answered that he looked, but did not see any car coming.

On cross-examination witness testified that his eyesight was good.

10 The west-bound car had not reached 15th street, but was farther east when he first saw it. He was about at the rear of Holland's store, about forty feet, he supposed, up Bladensburg road from the corner of H street, when he first saw this car. The car was not going very fast. Questioned concerning the witness riding alongside the west-bound car, witness said that by the time he reached the west-bound track the west-bound car slowed up very slow for about 6 or 8 feet, and the conductor then signalled to go ahead, and as the car went by him he started across and the east-bound car struck him.

Asked if he looked before he crossed the east-bound track to see whether a car was approaching on the east-bound track, witness replied that he did. Asked where he was when he looked, he said as he came around Holland's corner, Bladensburg road, and H street he looked up H street, looking west, to see if an east-bound car was coming and didn't see any.

Q. There was no vehicle to obstruct your view?

A. No.

Q. Nor anything else?

A. Not to my knowledge, there was not.

Q. You didn't see the car?

A. I didn't see the car.

To further questions witness said he could see 'as far west on H street as Fourteenth, he should judge. There were a very few vehicles on H street at the time. His view was unobstructed when he looked west. From the place where he was when he looked west to see if a car was coming was about 40 or 50 feet—he couldn't say exactly—from where he crossed. Asked if in this 40 or 50 feet he again looked to see if a car was coming east, he replied that he had his face in that direction at the time, but didn't see any car.

11 He rode very slowly across the east-bound track.

Q. It was possible for you to have alighted from your bicycle if you had seen the car when it crossed the west-bound track?

A. Had a signal been given I would have had time to step off; I was going at that rate of speed.

Q. You were going at such a rate of speed that had you seen the car when your bicycle was still on the west-bound track you could have jumped off in time to avoid a collision?

A. If I had heard the gong or seen the car I could.

Q. When you got right back of the west-bound car and before you left the west-bound track with your bicycle did you look to see if a car was coming east?

A. I had looked before that and I didn't look up the track any more on account of looking where I was going ahead.

Q. Did you not look west to see if the east-bound car was coming?

A. And the last thing I did in crossing over the track—it was so close to me that it was like a flash and it was all over.

Q. How far was the car from you, if you can estimate it, when you did leave the west-bound track?

A. When I left the west-bound track I judge the car was about as far as from here to that post from me. (The post was about six feet or so off.)

Q. Were you not riding moderately enough to alight from your wheel?

A. It was coming too fast. When I saw it my front wheel was then on the east-bound track.

Q. You were then on the east-bound track?

12 A. My front wheel was.

Q. The car was how far from you then?

A. About three or four feet.

Q. While you were riding on your wheel across the street between the east and west bound track-, did you look west to see if the car was coming—while you were making the space between the east and west bound tracks, did you again look west to see if an east-bound car was coming?

A. No, sir.

Q. Do you know of any reason why you did not?

A. Because the other car had just gone out, and I was sure there was no other car right behind it.

Q. You said the other car had just gone out?

A. The west-bound car had just gone out.

The COURT: He does not understand your question.

By Mr. BEHREND: What I asked you was this: Whether while you were crossing on your bicycle the space between the two tracks, which was about four or five feet, you looked west to see if any east-bound car was coming?

A. Looked west to see if an east-bound car was coming? I looked west to see if the car was coming, but not while the west-bound car was going out.

Q. The question is this: Suppose you look at the map. When the fore part of your wheel was on the south track—that is, the south rail of the west-bound track, and before you left that point to cross the track—did you look to see if the car was coming east?

A. Yes; but it was too late. The car was on me. I passed behind the other car, and the car came right up on me.

13 Q. So that, as I understand it, between the time you left this point, where you had an unobstructed view of the east-bound track, and the time you were struck, you did not look to see if the car was coming?

A. As I was crossing the track I couldn't look because the other car was going west and headed me off.

Q. How far was that west-bound car from you?

A. As the car passed me I came right behind it with my wheel to cross over to Maryland avenue.

Q. When you passed from behind the west-bound car could you not have seen it in time to have alighted?

A. No, sir.

Q. Did you look?

A. I did, but it was so close on me that I didn't have time to alight.

To further questions witness said the fender of the car struck his front wheel. His wheel was not all on the east-bound track when he was hit. His front wheel was just over the rail. His body was not over the nearest east-bound rail when he was struck. There were no signals, bells or gongs rung. Asked if by saying he received no signals or warnings of the approach of the east-bound car he didn't mean he heard none, witness replied that he "received none. There was none given." Further he said, Yes; he could say none were given. There was no gong sounded.

On redirect examination he was asked if he meant to state there were no vehicles or cars in the street, or that none attracted his attention when he looked up H street, witness said that a car was going west. The car that struck him could have been
14 coming east, and at a certain point this car, going west, could have hidden another car from his view. Later, when recalled, he testified he knew the length of the summer cars. They were 32 feet, about, from tip to tip. When recalled, plaintiff under cross-examination further testified that he crossed at that point two times a day, coming from and going to work; that he is perfectly familiar with the locality; that H street is straight; that there is no curve in it toward the west.

CHARLES P. CALVERT, surveyor, identified a map exhibited to the jury. It was stipulated between counsel that this map should be exhibited to the Court of Appeals if its production could be obtained and the Court of Appeals assented, and that if this assent or production could not be obtained, that the record should be supplemented by an addition to the record.

* * * * *

HERBERT VAN NESS, white, testified that he is employed in Tolbert's feed store. He was standing in the store door and saw Barrett turn into H street from Bladensburg road. Barrett was riding a bicycle at a moderate speed. A customer wanted him in the store and he turned back and didn't know of an accident until his attention was attracted by a cry some one was hurt. They were picking Barrett up. He was on the track diagonally across from the feed store. An east-bound car was five or six feet east of Barrett. Asked what vehicles, if any, were on the north or west bound track west of Tolbert's store at the time

15 Barrett turned from Bladensburg road to go into H street, just prior to the accident, witness replied that he remembered no vehicles outside the cars. There were sev-

eral cars there. Cars were stretched out on both tracks; he could not say just how many; there might have been five or six or only two or three, but he knew there were cars parked on each track west of where the accident happened, at or just before the time it occurred. Asked to indicate about where they were, he indicated on the map that they were strung out on both tracks along from in front of Wilt's grocery store to the westward. Witness was then asked what, if any, was the custom as to cars at that time of the evening being parked or standing on the tracks. The question was objected to by the attorneys for the defendant as immaterial, and, objection being sustained, an exception was duly noted. Witness went out and asked Barrett, who was on a bale of hay, if he was badly hurt. Barrett said he did not know just what ailed him and didn't know how he was hurt, he was in such pain. Witness further added: He was, of course, almost paralyzed from fright and pain. On cross-examination, witness said there were cars on both tracks at the time. He couldn't be sure just how many cars there were, but reiterated there were some parked there on both tracks; there were cars on both tracks. There were some cars west of Fifteenth street and, he thought, some right across Fifteenth street. Asked if he meant to say cars were standing still there, witness replied that he did. "Some cars were standing still, and there were others moving." They were run to the feed store and west. He wanted to explain the matter, witness said. It was the men's supper time, and cars would be run up and stay where they happened to come

16 to a stop while the men ate their supper. One car would go up on the switch and remain there a while, and then another would pull up, and they would keep going back and forth continually for an hour. He had seen them standing all the way from the switch to Fourteenth street. Sometimes none would be in motion, and at other times two or three in motion. The switch was near the front of the power-house, which is between 15th and 16th streets east. The underground trolley ended there. Some cars ran clear out into the country, but not all, some stopping at the power-house. In answer to a number of further questions, witness reiterated that cars were standing parked on the tracks just prior to the accident when Barrett turned the corner. Some cars were standing right in

front of the feed store and some were standing to the right of the store, up H street to the west, at the time of the accident. After the accident, when he came out, on hearing some one make a remark about an accident, there were cars standing there. The witness was thereupon asked the following questions on cross-examination:

Q. Do you undertake to say that there were cars standing in this street on the track and cars were running east and west?

A. I pretend to say that cars were standing there. I couldn't say that they were on that evening, but I have seen them standing all the way from 14th street to the switch.

Q. I want to know whether at the time of this accident you say there were cars standing on the regular track running east and west there?

A. There were cars standing on those regular tracks.

Q. Where?

A. Some of them were standing right in front of our store and some were standing to the right of the store upon H street,
17 to the west.

On redirect examination witness testified he was positive there was a car or two back west towards Florida avenue just before the accident. They were standing nearly the same on the other track.

JOHN TOLBERT, contractor, testified that he was sitting on a bale of hay in front of his brother's store, talking, when Barrett was struck by a Columbia street car. He saw Barrett turn into H street from Bladensburg road. Barrett was riding slowly. Witness' back was to the car tracks, and the first he knew of the accident was when he heard some one call out. Looking around he saw Barrett had been hit by a car and was lying between the two tracks. He picked Barrett up and helped him over to a bale of hay; couldn't say there were or were not cars standing on the west-bound track at the time. He didn't pay much attention to anything except Barrett. There was one car going east; he thought the one that struck him. He didn't give any attention to the cars, but to Jim. There most always were cars standing there at that time of the evening; couldn't say there were any there at that time. The east-bound car was about one-car's length east of Barrett when he picked the latter up. Barrett was between the tracks and very near the east-bound rail. He heard no bells or gongs rung, but wouldn't be sure there weren't any rung, for he was not paying attention. He didn't remember hearing any.

On cross-examination witness testified there was one car passing west and one car coming east, and that the west-bound car, when he first saw it, was in front of his brother's store. Barrett was lying
18 opposite Wilt's grocery store, which is next to his (Tolbert's) brother's store, when he picked him up. He didn't see Barrett until he was lying on the ground. The east-bound car was still in motion and had passed Barrett when he first turned around and saw Barrett on the ground; it had not quite reached

the switch ; about twenty feet from it ; does not think it stopped until it reached the switch. Car was moving at fair rate of speed ; about the way they generally do.

Dr. A. W. BOSWELL, physician, testified that he had attended Barrett. There was a permanent contraction of the leg and he would be lame for life, in witness' opinion.

EDWARD JOHNSON, colored, a shoemaker, testified that he was standing against an electric light pole at the edge of the pavement on the south side of H street, at the corner of H street and Maryland avenue, when he saw Barrett ride down the Bladensburg road shortly before the accident. A west-bound car pulled out from the switch just as Barrett was coming into H street from Bladensburg road. Barrett rode behind the car to about Tolbert's feed store. He didn't see him ride behind the car because the car was between them, but he judged that must have been it, for he didn't see Barrett from the time his eye lost him until about at the feed store. Barrett came across behind a west-bound car and witness saw him just as his wheel was struck by the fender of the car on the east-bound track. He thought it was at the feed store, but could not be sure of distances so long afterwards. Barrett made a grab at something and was dragged, and then let go his hold and fell between the track. Barrett was between the tracks, about two lengths

19 of a man behind the car that struck him, when picked up.

He saw the east-bound car, which hit Barrett, stop on H street, about opposite the corner where Florida avenue runs into H street, to let a lady off. He noticed the motorman when he was near on Barrett, and he was turning his head and looking back up H street to the west just before the accident. Witness saw the east-bound car as it came along. There were no bells of any kind rung at all. He was about twenty feet from the car track and on the same side of the street with the east-bound car. Asked how fast the car was going when it hit Barrett, witness testified that it was going faster than he could run, to save his life. Asked how fast he could run for a short distance, witness replied he could make a speed of five miles an hour walking. Asked how fast in miles an hour the car was going, he answered, The car was going eight miles an hour exactly. He didn't remember whether the cars were standing on the west-bound track before the accident or not. On cross-examination witness said the west-bound car was northeast of 15th street when he saw Barrett in the middle of Bladensburg road. Barrett rode behind the west-bound car—at least he judged it must have been that, for witness couldn't see him until just before Barrett was hit. Counsel for plaintiff asking what he meant by behind, witness explained that he meant beside the car. The car shut off his view. The west-bound car was a closed car. Barrett in crossing the street-car tracks passed about the distance from witness to a chair (about six or eight feet) behind the west-bound car. It seemed to him that the fender struck both wheels at the

20 same time. Barrett's front wheel had gotten over the first rail when Barrett was struck, and Barrett was dragged along while the wheel was thrown over into the fender. To further questions he said the rail farthest from him was a little more than half way of the wheel when struck. Barrett's body was not over the rail when the car struck the front wheel of bicycle. When he saw Barrett he was riding alongside the closed car a little ways east of Tolbert's feed store. He was about at the centre or end of Maryland avenue at the time. Witness could not say how far Barrett rode along behind the car before he crossed the track. Barrett was a little northeast of him when he first saw him. Asked if Barrett was not west of him when he started across the track, witness replied no; that Barrett was dead north of him when he crossed. Witness said he lost sight of him when he rode behind the car until as he crossed the track. Witness could not see him because he could not see through the car. He judged Barrett rode behind the car because the car cut off his view; he meant alongside the car, and the car threw his sight off Barrett. He only knew Barrett rode alongside the car because Barrett rode farther to the west when he crossed than when witness first saw him. The fender tripped Barrett's wheel up. The handle bars of the wheel were between the meshes of the fender, and the wheels were sticking out towards the front of the fender when the bicycle was taken out after the accident. Barrett fell in the space between the two tracks, and the car that struck him passed on and stopped a little ways ahead of where Barrett lay.

Witness said the east-bound car started right off at full speed after letting a lady off down the block near Florida avenue, or a little ways up above.

21 CALVIN S. HOLLAND testified that he saw the plaintiff just after the accident. Witness was standing in front of the doorway of his store, on the northwest corner of H street and Bladensburg road. Witness did not notice plaintiff until he was being picked up by several men, at which time plaintiff was in the rear of the car. Witness thought, but was not sure, that the car had stopped. On cross-examination he said that he recollected seeing no other cars on the tracks other than the one which struck plaintiff and the one going west; thought he probably would have seen them had they been there. He did not see the car strike plaintiff and did not know the rate of speed at which the car was going. He could not say whether any bells were rung by the car or not. Bells generally were rung, but he was not paying attention and didn't notice.

Police regulations were put in evidence permitting at this time a speed of fifteen miles in the country, twelve miles in the city, and six miles at street crossings; also requiring cars to stop, when necessary to stop, on the far sides of streets.

JOSEPH THOMPSON testified that he was standing in H street, just east of the corner of H and Maryland avenue, at the time of the accident. He was on the south side of the street. He heard no bells or signals when the east-bound car was passing the west-bound car. Asked whether there were any bells rung, witness replied, No, no bells. He thought it was on the curve Barrett was hit. The car ran a little distance around the curve after witness' attention was attracted by a cry of an accident; he didn't see Barrett when
22 he was hit. He went to the front of the car and got the bicycle, and after speaking to Barrett took it home. The bicycle was in the fender, with the handle bars sticking down through the ropes of the fender, and the wheels pointing outwards toward the end of the fender in front of the car. On cross-examination, witness said he had been standing in the street about twenty-five minutes before, talking to a friend named Smith.

JOHN SMITH testified that he was standing on the south side of the street and H street and Maryland avenue at the time of the accident. When he first saw Barrett, Barrett was coming out of Bladensburg road, heading into H street. He wasn't looking that way and did not see the accident. He heard no bells or warnings rung. Could not say how fast the car was running. Barrett was three or four feet behind the rear of the east-bound car when he was picked up.

ROBERT LAMB, District inspector, testified that he was outside Tolbert's feed store at the time of the accident. Barrett was riding slowly along H street to the west and parallel with the west-bound car just before the accident. He didn't see Barrett when struck, but heard an outcry and saw Barrett holding onto the fender, and he was making a revolution in the air; heard no bells, but couldn't be sure none were rung. Asked to state to the best of his knowledge and belief were there any—if so, how many—cars standing on the north or west bound track just before the accident, witness replied, that is a thing he hardly ever noticed in particular. If there were
no cars there at all he would notice it more particularly than
23 if there were a dozen cars there. To a further question, he said he was satisfied there was a car standing on the west-bound track in front of Wilt's store.

Plaintiff thereupon announced his case closed. Counsel for the defendants moved the court to direct the jury to return a verdict for the defendant. The court granted the motion and directed the jury to return a verdict for the defendant, which the jury accordingly did. Counsel for plaintiff noted an exception. A motion for a new trial was filed by plaintiff and overruled by the court and judgment directed to be entered in favor of the defendant. Exception and an appeal noted by plaintiff in open court.

Be it further remembered that each of the separate and several exceptions taken by counsel for the plaintiff to the rulings of the court during the progress of the trial and each of the exceptions taken by counsel for the plaintiff to the order of the court directing the jury to return a verdict for plaintiff and to the overrulings of plaintiff's motion for a new trial and the entry of judgment on the verdict were then and there separately and severally duly noted upon the minutes of the justice presiding at the trial, and counsel for the plaintiff then and there prayed the court, and now prays the court, to sign and seal this bill of exceptions, to have the same force and effect as if each of the said exceptions were separately and severally set forth in a separate bill of exceptions, and at the
 24 request of said counsel for the plaintiff the same is accordingly signed and sealed and made a part of the record in this cause, now for then, this 5th day of February, 1902.

HARRY M. CLABAUGH. [SEAL.]

We consent to the above bill of exceptions.

C. C. COLE.

R. B. BEHREND.

JAMES B. ARCHER, JR.

CHAS. H. MERILLAT.

25 UNITED STATES OF AMERICA, } ss :
 District of Columbia,

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 24, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 44427, at law, wherein James Barrett is plaintiff and The Columbia Railway Company is defendant, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
 Seal Supreme Court my name and affix the seal of said court, at
 of the District of the city of Washington, in said District, this
 Columbia. 14 day of February, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1188. James Barrett, appellant, vs. The Columbia Railway Co. Court of Appeals, District of Columbia. Filed Mar. 4, 1902. Robert Willett, clerk.

